

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 28, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 450 (3/27/03); SB 282
(3/27/03); SB 360 (3/27/03); SJR 17
(3/27/03)

Executive Action: SJR 17 Be Concurred In As Amended;
SB 304 Be Concurred In As Amended;
SB 282 Be Concurred In As Amended;
SB 360 Be Concurred In

HEARING ON SB 450

Sponsor: SEN. VICKI COCCHIARELLA, SD 32, Missoula

Opening Statement by Sponsor:

SEN. COCCHIARELLA said this bill revises laws related to workers' compensation. It provides for disclosure and communication of health care information for workers' compensation purposes without prior notice to the injured employee. This bill bars attorney fees under the common fund doctrine and excludes impairment ratings based exclusively on pain. It increases the permanent partial disability benefit maximum entitlement from 350 to 375 weeks. She also provided a breakdown of the earnings of a person 41 years old and the benefits they would have received.

EXHIBIT (buh66a01)

{Tape: 1; Side: A; Approx. Time Counter: 26 - 141}

Proponents' Testimony:

Bob Pavlovich, representing himself, said he supports the bill.

{Tape: 1; Side: A; Approx. Time Counter: 141 - 143}

Oliver Goe, Attorney at Law, Montana Municipal Insurance Authority, said they provided workers' compensation. He explained the changes in the bill.

{Tape: 1; Side: A; Approx. Time Counter: 143 - 212}

Jerry Driscoll, Montana AFL-CIO, said this bill will speed up the process of getting information by a claims adjuster to acquire information from a doctor regarding a client's case.

{Tape: 1; Side: A; Approx. Time Counter: 212 - 251}

Aidan Myhre, Montana Chamber of Commerce, said workers' compensation continues to be one of the issues that rises to the top every year regarding the concerns among employers. A group of individuals put together a list of things that could be improvements in the workers' compensation system. The issues they finally determined to be the most important are the issues found in this bill.

{Tape: 1; Side: A; Approx. Time Counter: 251 - 276}

Larry Jones, Liberty Northwest, said he supports this bill.

{Tape: 1; Side: A; Approx. Time Counter: 276 - 282}

Jacqueline Lenmark, American Insurance Association, said they supports this bill.

{Tape: 1; Side: A; Approx. Time Counter: 282 - 290}

Nancy Butler, Montana State Fund, said the National Council on Compensation Insurance (NCCI) sets workers' compensation rates in a substantial number of states. They set those rates up for the private carriers. NCCI priced this legislation as having a 1.3% to 1.7% rate impact.

{Tape: 1; Side: A; Approx. Time Counter: 290 - 308}

Bob Worthington, CEO, Montana Municipal Insurance Authority, said workers' compensation is a serious issue for cities. This bill is a compromise to assist them in managing those issues for communities, and they support this bill.

{Tape: 1; Side: A; Approx. Time Counter: 308 - 314}

Riley Johnson, NFIB, said they support this legislation.

{Tape: 1; Side: A; Approx. Time Counter: 314 - 321}

Spook Stang, Executive Vice President, Montana Motor Carriers, said they support this bill.

{Tape: 1; Side: A; Approx. Time Counter: 321 - 324}

Steve Turkiewicz, Montana Auto Dealers Association, said they support this bill.

{Tape: 1; Side: A; Approx. Time Counter: 324 - 330}

George Wood, Executive Secretary, Montana Self Insurers Association, said they strongly support this bill.

{Tape: 1; Side: A; Approx. Time Counter: 330 - 337}

Don Allen, Cenex, said they support this bill.

{Tape: 1; Side: A; Approx. Time Counter: 337 - 340}

Shaun Bubb, Director, Insurance Services, Montana School Boards Association, said they support this bill. It is a good compromise bill and will be a good step forward for both sides.

{Tape: 1; Side: A; Approx. Time Counter: 340 - 346}

Carl Schweitzer, Subcontractors Association, said they support this bill.

{Tape: 1; Side: A; Approx. Time Counter: 346 - 354}

Opponents' Testimony:

Larry Anderson, Attorney at Law, Great Falls, said he wanted to emphasize the issues and terms of ex-party communications between doctors and insurance adjusters. He also spoke of the common fund issue.

{Tape: 1; Side: A; Approx. Time Counter: 354 - Tape: 1, Side: B; Approx. Time Counter: 31}

Charley Fish, Townsend resident, said he is an injured worker. He said he opposes this bill because the average person does not have complete knowledge of the law and how things are written in regard to legal assistance. He stated that the injured worker should be able to seek counsel and let an attorney represent the workers to deal with the issues regarding their cases.

{Tape: 1; Side: B; Approx. Time Counter: 31 - 46}

Don Judge, Teamsters Local 190, said they are opponents of the bill.

{Tape: 1; Side: B; Approx. Time Counter: 46 - 88}

Al Smith, Montana Trial Lawyers Association, provided testimony from Allan M. McGarvey, Attorney at Law, Kalispell.

EXHIBIT (buh66a02)

{Tape: 1; Side: B; Approx. Time Counter: 88 - 130}

Informational Testimony:

Jerry Keck, Administrator, Employment Relations Division, Department of Labor & Industry, said they would be available for questions from the Committee.

Questions from Committee Members and Responses:

REP. MORGAN asked Ms. Butler if there was a 1.5% rate increase in worker's compensation. **Ms. Butler** said it is primarily the additional weeks of permanent-partial coverage.

{Tape: 1; Side: B; Approx. Time Counter: 130 - 149}

REP. BOOKOUT-REINICKE asked the Sponsor if these new procedures apply to current cases. **SEN. COCCHIARELLA** said, according to the effective date, this bill will only apply to workers after July 1, 2003.

{Tape: 1; Side: B; Approx. Time Counter: 149 - 162}

REP. MATTHEWS asked the Sponsor to explain the common fund to the Committee. **SEN. COCCHIARELLA** said an attorney who is retained by a worker goes to court and wins a benefit. They have a relationship and a contract between them. When that attorney goes to court and wins something that could apply to other injured workers, that attorney then goes to the judge and receives a decision that he gets common-fund benefits as compensation for being the attorney. From any other worker that this attorney has never met or had a contractual agreement with, money comes from the increased benefit the unrelated attorney has been able to gain for the initial worker.

{Tape: 1; Side: B; Approx. Time Counter: 162 - 222}

REP. FRITZ asked Mr. Smith about the privacy issue problem. **Mr. Smith** said the concern with the privacy issue does not say the clients cannot talk to treating physicians. Prior to meeting with the claimant, notice must be given to the claimant and his counsel that A Notice To Counsel is issued.

{Tape: 1; Side: B; Approx. Time Counter: 222 - 247}

REP. WEISS asked Mr. Smith about the common fund. **Mr. Smith** said they were funds which had been gained from a court case involving a claimant which was due him and he didn't ever receive the benefits.

{Tape: 1; Side: B; Approx. Time Counter: 247 - 300}

REP. GALLIK asked Mr. Driscoll why a claimant's benefits were not based exclusively on pain. **Mr. Driscoll** said he did not know.

{Tape: 1; Side: B; Approx. Time Counter: 300 - 446}

REP. BOOKOUT-REINICKE asked Mr. Driscoll if dues could be paid to two different unions. **Mr. Driscoll** said they could but it was rare.

{Tape: 1; Side: B; Approx. Time Counter: 446 - 500}

REP. MAEDJE asked Ms. Butler about an effective date. **Ms. Butler** said July 1, 2004.

{Tape: 1; Side: B; Approx. Time Counter: 500 - 507}

Closing by Sponsor:

The Sponsor closed.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 279}

HEARING ON SB 282

Sponsor: SEN. CAROLYN SQUIRES, SD 34, Missoula

Opening Statement by Sponsor:

SEN. SQUIRES said this bill is an act requiring that temporary total disability benefits not be paid for the lesser of either the first 32 hours or 4 days' loss of wages if a claimant is totally disabled and unable to work for 5 or more days because of an injury.

{Tape: 2; Side: A; Approx. Time Counter: 279 - 345}

Proponents' Testimony:

Bob Pavlovich, representing himself, said he supports this bill.

{Tape: 2; Side: A; Approx. Time Counter: 345 - 347}

Jerry Driscoll, Montana State AFL-CIO, said this bill is a lot less complicated and less controversial. This bill allows the injured worker to receive one more day of lost time after injury.

{Tape: 2; Side: A; Approx. Time Counter: 347 - 380}

Aiden Myhre, Montana Chamber of Commerce, said there was an increase in premiums to employers of 11%. The system needs to work together with both employers and employees.

{Tape: 2; Side: A; Approx. Time Counter: 380 - 413}

Riley Johnson, National Federation for the Business, said employers rely on the workers' compensation. The State is very conscious of taking care of its employees and employers.

{Tape: 2; Side: A; Approx. Time Counter: 413 - 428}

George Wood, Executive Secretary, Montana Self Insurers Association, said he supports this legislation.

{Tape: 2; Side: A; Approx. Time Counter: 428 - 439}

Oliver Goe, Montana Municipal Insurance Authority, said they concur in the comments of the prior proponents.

{Tape: 2; Side: A; Approx. Time Counter: 439 - 444}

Shaun Bubb, Director, Insurance Services, Montana School Boards Association, said they support this bill but asked that the Committee consider a minor amendment changing the effective date to July 1st. This will make it consistent with other funding changes for the Workers' Compensation Act.

{Tape: 2; Side: A; Approx. Time Counter: 444 - 455}

Al Smith, Montana Trial Lawyers Association, said they supported this bill. It is very necessary to have that extra day of pay. If they represented an injured worker and the worker received the highest amount under workers' compensation, this could mean an extra \$14.40.

{Tape: 2; Side: A; Approx. Time Counter: 455 - 467}

Don Judge, Teamsters Local 190, said they support this legislation.

{Tape: 2; Side: A; Approx. Time Counter: 467 - 473}

Sami Butler, Registered Nurse, Montana Nurse's Association, said they support this bill. Unfortunately, nurses are injured on their jobs some of the time. This bill obviously is a positive step for all workers, but in an environment where there is a decreasing supply of nurses and an increasing demand for nurses, anything they can do to retain some experienced nurses they want to support.

{Tape: 2; Side: A; Approx. Time Counter: 473 - 485}

Jacqueline Lenmark, American Insurance Association, said they support this bill as part of a group of bills they believe will enhance and improve the workers' compensation system. She then spoke of the increase in premiums.

{Tape: 2; Side: A; Approx. Time Counter: 485 - 500}

Opponents' Testimony: None

Informational Testimony:

Jerry Keck, Administrator, Employment Relations Division, Department of Labor & Industry, said he was available for questions from the Committee. He also supplied a TTD Waiting Period Chart.

EXHIBIT (buh66a03)

Questions from Committee Members and Responses: None

Closing by Sponsor:

The Sponsor closed. He indicated that REP. LASZLOFFY will carry the bill on the House Floor.

{Tape: 2; Side: B; Approx. Time Counter: 113 - 150}

HEARING ON SB 360

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Opening Statement by Sponsor:

SEN. THOMAS said this bill requires the State Fund to include a provision in every policy of insurance issued that incorporates a restriction on the use and transfer of money collected by the State Fund. It also prohibits the Legislature from transferring the assets of the State Fund to other funds or for other programs.

{Tape: 2; Side: B; Approx. Time Counter: 158 - 279}

Proponents' Testimony:

Matthew Cohn, Montana State Fund, said this bill provides additional contract assurance to their policy holders, and it also assures that premiums will go for the purposes for which they are intended. A study was proposed to evaluate the structure of the State Fund. That study was never conducted. The protection of the surplus and assets was a major component of that study.

{Tape: 2; Side: B; Approx. Time Counter: 279 - 300}

Byron Roberts, Montana Building Industry Association, said they support this bill.

{Tape: 2; Side: B; Approx. Time Counter: 300 - 318}

Jerry Driscoll, Montana State AFL-CIO, said is a number one issue to protect the surplus and the total funds of the State Fund. If this Legislature did ever appropriate any of this money, either the rates would go up or benefits would go down.

{Tape: 2; Side: B; Approx. Time Counter: 318 - 337}

Charles Price, Billings Chamber of Commerce, said these funds need to be protected for their intended benefit.

{Tape: 2; Side: B; Approx. Time Counter: 337 - 384}

Aiden Myhre, Montana Chamber of Commerce, said the premiums which are paid to the State Fund are protected and must go toward the purpose for which they are intended. She asked to have the record show that Jacqueline Lenmark also supports this bill.

{Tape: 2; Side: B; Approx. Time Counter: 384 - 385}

Steve Turkiewicz, Montana Auto Dealers Association, said they had been in the workers' compensation field since 1996. He indicated they support the bill.

{Tape: 2; Side: B; Approx. Time Counter: 385 - 412}

Spook Stang, Executive Vice President, Montana Motor Carriers Association, said they support this bill.

{Tape: 2; Side: B; Approx. Time Counter: 412 - 435}

Bill Price, Independent Insurance Agents of Montana, explained the differences between reserves and surpluses: reserves are dollars set by actuaries for predicated losses, and the surplus is there because laws are changed.

{Tape: 2; Side: B; Approx. Time Counter: 435 - 468}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MORGAN asked Mr. Cohn about the status of the scholarship fund. **Mr. Cohn** said the scholarship fund is still functioning and the funds come out of the current fund.

{Tape: 2; Side: B; Approx. Time Counter: 468 - 500}

REP. FRITZ asked **SEN. THOMAS** if he objected to an amendment regarding a three quarter vote to break the Workers' Compensation Fund. **SEN. THOMAS** said he would not agree to that amendment.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 25}

REP. LAWSON asked Mr. Cohn about the establishment of another state fund. **Mr. Cohn** said they were looking at restructuring how the Montana State Fund was organized under current state law. It was looking at certain statutes and how they would operate. The Legislature created the Fund and it can only be ended by the Legislature.

{Tape: 3; Side: A; Approx. Time Counter: 25 - 58}

Closing by Sponsor:

The Sponsor closed.

{Tape: 3; Side: A; Approx. Time Counter: 58 - 233}

HEARING ON SJR 17

Sponsor: SEN. JOHN TESTER, SD 45, Big Sandy

Opening Statement by Sponsor:

SEN. TESTER said this resolution of the Senate and House of Representatives of the State of Montana requests the Legislative Council to designate an appropriate interim committee or direct sufficient staff resources to study methods of simplifying laws related to workers' compensation and occupational diseases.

{Tape: 3; Side: A; Approx. Time Counter: 240 - 277}

Proponents' Testimony:

Jerry Driscoll, Montana State AFL-CIO, said this study resolution is necessary so people will understand workers' compensation and make it easier to understand the process.

{Tape: 3; Side: A; Approx. Time Counter: 277 - 290}

George Wood, Executive Secretary, Montana Self Insurers Association, said they support this bill.

{Tape: 3; Side: A; Approx. Time Counter: 290 - 294}

Matthew Cohn, Montana State Fund, said they support this bill.

{Tape: 3; Side: A; Approx. Time Counter: 294 - 299}

Charles Brooks, Billings Chamber of Commerce, said they support this bill.

{Tape: 3; Side: A; Approx. Time Counter: 299 - 309}

Bill Price, Independent Insurance Agents of Montana, presented amendments for this bill which were requested by SEN. JOHN TESTER.

EXHIBIT (buh66a04)

{Tape: 3; Side: A; Approx. Time Counter: 309 - 378}

Aiden Myhre, Montana Chamber of Commerce, said they support this bill.

{Tape: 3; Side: A; Approx. Time Counter: 378 - 388}

Mike Barrett, Helena resident, supports this bill.

{Tape: 3; Side: A; Approx. Time Counter: 388 - 420}

Travis Ahner, Montana Trial Lawyers Association, said they support this resolution.

{Tape: 3; Side: A; Approx. Time Counter: 420 - 428}

Opponents' Testimony: None

Informational Testimony:

Jerry Keck, Department of Labor & Industry, said he was available for questions from the Committee.

Questions from Committee Members and Responses: None

Closing by Sponsor:

The Sponsor closed.

{Tape: 3; Side: A; Approx. Time Counter: 448 - 451}

EXECUTIVE ACTION ON SJR 17

{Tape: 3; Side: A; Approx. Time Counter: 451 - 500}

Motion: REP. BITNEY moved that SJR 17 BE CONCURRED IN.

Motion/Vote: REP. BITNEY moved that SJR 17 BE AMENDED. Motion carried 18-0.

Motion/Vote: REP. BITNEY moved that SJR 17 BE CONCURRED IN AS AMENDED. Motion carried 18-0.

REP. BITNEY will carry this resolution on the House Floor.

EXECUTIVE ACTION ON SB 304

Motion: REP. KEANE moved that SB 304 BE CONCURRED IN.

Discussion:

Mr. Campbell distributed the three sets of amendments. He also indicated these were three separate issues.

Motion: REP. KEANE moved that SB 304 BE AMENDED.

EXHIBIT (buh66a05)

Discussion:

Mr. Campbell further explained the Keane amendment. These amendments expand the study of the State Fund including the sale of the Fund and the role of the State Fund and look at the possible sale. Subsection 4 in its entirety is also removed from the bill.

REP. KEANE said he had asked the sponsor if he approved of expanding the study and not just the sale of the Fund.

REP. BITNEY asked if these were all friendly amendments. **REP. KEANE** affirmed this.

Vote: Motion carried 18-0. (Exhibit 5)

Motion: **REP. KEANE** moved that SB 304 BE CONCURRED IN AS AMENDED.

Motion: **REP. MORGAN** moved that SB 304 BE AMENDED.

EXHIBIT (buh66a06)

Discussion:

Mr. Campbell said there was some confusion as to what an "agent" would be. The State Fund assumed that it referred to a licensed agent of the company. The word "representative" is a more generic term and creates less consternation about who could fill that role. The State Fund is required to fund this study, and it puts a limit on the cost of the study not to exceed \$100,000. The State Fund is required to provide some support but must also do that under the direction of the Committee.

REP. GALLIK said the second portion of this amendment is of concern to him because it refers to the fact that the State Fund funded by the people who are being studied. He stated that is a conflict.

REP. BITNEY said the concern stated by **REP. GALLIK** is not a concern. The alternative is to take \$100,000 from the General Fund which no one wants to do.

CHAIRMAN MCKENNEY said the Fund will be taking State Fund money to study State Fund which is not an appropriate use.

REP. MAEDJE questioned the effective dates. **Mr. Campbell** said his question was answered at the end of the bill.

Vote: Motion carried 17-1 with REP. GALLIK voting no. (Exhibit 6)

Motion: REP. WEISS moved that SB 304 BE AMENDED.

EXHIBIT (buh66a07)

Discussion:

Mr. Campbell said the Bergren amendment would state that as the possible sale of the State Fund was studied, the study would also be required to include an examination of the creation of the risk pools.

Vote: Motion carried 18-0. (Exhibit 7)

Motion: REP. WEISS moved that SB 304 BE CONCURRED IN AS AMENDED.

Discussion:

REP. MENDENHALL said that if this resolution is passed, there will be many resolutions involving studies, and at the end of all of this the Legislature accepts or rejects the study done by the State Fund's proposal.

CHAIRMAN MCKENNEY said if this bill passes the study, the joint resolution will then be voted upon. Should SB 304 pass or not, it was a concern of the Legislature.

REP. GALLIK said he opposes the bill.

REP. KEANE said there were two distinct entities here and they both have value. The joint resolution is the whole system.

Vote: Motion carried 17-1 with REP. GALLIK voting no.

REP. MORGAN will carry the bill on the House Floor.

EXECUTIVE ACTION ON SB 282

Motion: REP. GALLIK moved that SB 282 BE CONCURRED IN.

Motion/Vote: REP. WEISS moved that SB 282 BE AMENDED. A roll call vote was taken. Motion carried 12-6 on a conceptual amendment, REPS. BITNEY, HAWK, MAEDJE, MENDENHALL, MORGAN and ROME voting no.

Motion/Vote: REP. WEISS moved that SB 282 BE CONCURRED IN AS AMENDED. Motion carried 18-0.

REP. LASLOVICH will carry the bill on the House Floor.

EXECUTIVE ACTION ON SB 360

Motion: REP. STEINBEISSER moved that SB 360 BE CONCURRED IN.

Discussion:

REPS. MENDENHALL, STEINBEISSER, GALLIK, GALVIN-HALCRO, MATTHEWS oppose the bill.

REPS. MAEDJE and MCKENNEY supported the bill.

Vote: A roll call vote was taken. Motion carried 10-8 with REPS. KEANE, BERGREN, FRITZ, GALLIK, GALVIN-HALCRO, MATTHEWS, WEISS, WILSON voting no.

ADJOURNMENT

Adjournment: 11:40 A.M.

REP. JOE MCKENNEY, Chairman

ALBERTA STRACHAN, Secretary

JM/AS

EXHIBIT (buh66aad)